SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 464

CHESTER BOWLES, AS ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION, APPELLANT

vs.

MRS. KATE C. WILLINGHAM AND J. R. HICKS, JR.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

INDEX

562891—43——1

1 [Title omitted.]

Appearances

[Omitted in printing]

2-3 In the District Court of the United States for the Middle District of Georgia, Macon Division

Civil Action No. 238

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

vs.

MRS. KATE C. WILLINGHAM and J. R. HICKS, Jr.

Docket entries

July 20, 1943—Filing Complaint and Issuing Summons.
July 20, 1943—Filing Rule Nisi, returnable July 24, 1943.
Aug. 4, 1943—Filing Answer and motion to Dismiss of Mrs. Kate C. Willingham.
Aug. 4, 1943—Filing Answer and Motion to Dismiss of J. R. Hicks, Jr.
Aug. 16, 1943—Filing Amendment to Complaint and Order allowing same.
Aug. 30, 1943—Filing Amendment to Answer and Motion to Dismiss of Mrs. Kate C. Willingham and Order of Court allowing same.
Sept. 1, 1943—Filing Order of Court dismissing action.
Sept. 14, 1943—Filing Motion for Amendment of Order of September 1, 1943, and amended order of Court.

4 In the District Court of the United States

[Title omitted.]

Complaint

Filed July 20, 1943

1. In the judgment of the Price Administrator defendant Mrs. Kate C. Willingham has engaged in acts and practices which constitute violations and attempted violations of the Emergency Price Control Act of 1942 (hereinafter termed the Act), the same being also violations and attempted violations of Maximum Rent Regulation No. 26 (hereinafter termed the Regulation), which prescribes maximum rents permitted to be charged for the use and occupancy of housing accommodations other than hotels and

rooming houses within the Macon, Georgia, Defense Rental Area, and among other things provided that where housing accommodations are rented for the first time after April 1, 1941, the Administrator shall determine by proper investigation whether or not the amount of such rent is higher than the maximum rent generally prevailing in the area for comparable housing accommodations on April 1, 1941, and in the event such rent is higher than such standard, to adjust the amount of such rent to an amount which will be no greater than that permitted by such standard.

2. The Price Administrator brings this action pursuant to Section 205 (a) of the Act to restrain violations and attempted violation of, and to enforce compliance with, said Act and said Regulation as amended.

3. Jurisdiction of this action is conferred upon the Court by Section 205 of the Act, as well as the general equity jurisdiction of this Honorable Court.

4. On or about April 28, 1942, the Price Administrator, pursuant to the authority vested in him by Section 2 (b) of said Act, did make, issue, and promulgate an order designating the counties of Bibb, Houston, and Peach within the State of Georgia as a Defense Rental Area.

5. On or about July 1, 1942, plaintiff's predecessor, Leon Henderson, as Price Administrator, pursuant to the authority vested in him by Section 2 (b) of said Act, did make, issue and promulgate Maximum Rent Regulation No. 26, effective July 1, 1942, which Regulation provides within said Defense Rental Area, among other things, for the establishment of maximum rentals permitted to be charged for the use and occupancy of housing accommodations other than hotels and rooming houses within said Area, and further, made provisions for the adjustment of rentals in certain instances as hereinbefore described.

6. Defendant Mrs. Kate C. Willingham, as landlord of certain premises located at No. 20 Arlington Place, Macon, Georgia, did after April 1, 1941, rent three units of housing accommodations on said premises at $60.00, $40.00, and $37.50 per month, respectively. Thereafter, under the authority of said Act and said Regulation Andrew J. Lyndon, Area Rent Director acting for and in behalf of the Administrator, did make an investigation of said described housing accommodations and did, on or about June 14, 1943, pursuant to authority vested in him, issue and forward to said defendant written notice to the effect that the amount of such rentals was in excess of that generally prevailing in said Area for comparable accommodations, and advised that said Rent Director proposed to decrease such rents from $40.00 to $27.50; from $37.50 to $25.00; nd from $60.00 to $37.50 per month, respectively.

Said notice also advised said defendant she had a right to rebut such finding and to file objections to such proposed action within five days, and in the absence of such objections that an order would be entered decreasing such maximum rentals.

7. Before the expiration of said period of five days and before said order was issued by said director, said defendant filed a petition in the Superior Court of Bibb County, Georgia, the same being No. 7508 in the Civil Division of said Court, returnable to the October term thereof, alleging the material facts heretofore set out and further alleging that said Rent Director was acting without legal authority; that said Regulation and said Act are unconstitutional and void on stated grounds; that said defendant was without an adequate remedy at law in the premises; and sought an injunction restraining said Rent Director from the issuance of said order. Acting on said order, Hon. Malcoim D. Jones, Judge of the Superior Court of Bibb County, did on July 14, 1943, issue an order restraining until further order of that Court, the said Rent Director from issuing any Regulation or other directive decreasing the rents then being charged by Mrs. Kate C. Willingham on the housing accommodations located at No. 20 Arlington Place, Macon, Georgia.

8. Defendant J. R. Hicks, Jr. is the only elected Sheriff of Bibb County, Georgia.

9. Said defendant Mrs. Kate C. Willingham has attempted, and is attempting, to perform acts in violation of said Act and Regulation by attempting to demand and receive rentals for said housing accommodations in excess of the maximum amounts for said accommodations fixed and determined therefor by said Area Rent Director pursuant to lawful authority.

10. Said order and judgment of the Superior Court of Bibb County, Georgia, is utterly void for that said Court was without jurisdiction to entertain said described petition or to issue said order, said Court having been divested of such jurisdiction by the terms of the Emergency Price Control Act of 1942, and particularly Section 204 (d) thereof.

11. Plaintiff herein seeks to invoke the injunctive processes of this Honorable Court for the enforcement of a Federal law and for the effectuation of declared Federal policy in the control of rentals within designated Defense Rental Areas throughout the United States and the prevention of acts and practices which are inflationary in nature.

12. Plaintiff is without an adequate remedy at law and in his capacity as Price Administrator, an officer of the United States, unless this Court as a Court of equity intervenes in his behalf, will suffer irreparable injury and damage in the disruption and obstruction of the rent control program within the United States.

Wherefore, plaintiff demands

1. A preliminary and final injunction restraining and enjoining defendant Mrs. Kate C. Willingham, and all persons in active concert or participation with her, from further prosecu-
7 tion of said described proceedings in the Superior Court of Bibb County, Georgia, and from performing any further act and practices in violation of the Emergency Price Control Act of 1942 and Maximum Rent Regulation No. 26, and from attempting or agreeing to perform any acts in violation thereof; a preliminary and final injunction restraining and enjoining defendant J. R. Hicks, Jr., as Sheriff of Bibb County, Georgia, his agents, deputies and all persons in active concert or participation with him, from executing or attempting to execute by service or otherwise, the said described order or any subsequent orders entered in said described proceedings in the Superior Court of Bibb County, Georgia.

2. A temporary restraining order on the basis of this complaint and the affidavit attached hereto as "Exhibit A" restraining and enjoining defendants, and each of them, from engaging in any of the acts or practices for which a preliminary and final injunction is demanded.

Plaintiff now moves the Court for an order setting a time and place for a hearing upon plaintiff's demand for a preliminary injunction.

T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney.
RALPH R. QUILLIAN,
Chief Attorney, Atlanta District Office,
L. P. WEBB,
Chief Enforcement Attorney, Atlanta District Office,
Office of Price Administration,
44 Pryor Street NE., Atlanta, Georgia.

GEORGE J. BURKE,
George J. Burke,
FLEMING JAMES,
of Counsel,
Office of Price Administration, Federal Office Building No. 4, Washington, D. C., Attorneys for Plaintiff.

8 *Exhibit "A" to Complaint*

In person before the undersigned, an officer authorized by law to administer oaths, appeared Ralph R. Quillian, who being duly sworn, deposes and says that he is Chief Attorney for the Office of Price Administration in the Atlanta District Office, and that

this affidavit is made for the purpose of being used as evidence for the plaintiff upon application for a temporary restraining order and any subsequent hearings seeking preliminary and final injunctions in the above entitled cause.

Further, that in the course of his official duties affiant has had occasion to examine the records of the Area Rent Director of the Macon Defense Rental Area and also a copy of the petition filed by Mrs. Kate C. Willingham in the Superior Court of Bibb County, Georgia, against said Area Rent Director, together with the order issued by said Court against said Rent Director.

Further, that the amount of maximum rents being demanded and received by said defendant Mrs. Kate C. Willingham for the accommodations described in the foregoing complaint, to wit: $60.00, $40.00, and $37.50 respectively, are in excess of the maximum rents fixed and determined by said Area Rent Director for said respective accommodations, and that in continuing to demand said higher rentals said defendant Mrs. Kate C. Willingham is violating and attempting to violate the Emergency Price Control Act of 1942 and said Rent Regulations.

Further, affiant saith not.

RALPH R. QUILLIAN.

Sworn to and subscribed before me, this the 16th day of July 1943.

VIRGINIA B. BOROUGHS,
Notary Public, Georgia, State at Large.

9 In District Court of the United States

[Title omitted.]

Summons and return.

To the above named Defendant:

You are hereby summoned and required to serve upon T. Nelson Parker, Ralph R. Quillian and L. P. Webb, plaintiff's attorneys, whose address is Office of Price Administration, 44 Pryor Street, N. E., Atlanta, Georgia, an answer to the complaint which is herewith served upon you, within Twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

GEORGE F. WHITE,
Clerk of Court.

[SEAL OF COURT] By HELEN P. ERWIN,
Deputy Clerk.

Date: July 20th, 1943.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 20th day of July 1943, I received the within summons, petition and order, and on same date served same on James R. Hicks, Jr., by leaving a true and correct copy thereof with Oscar Harris, Deputy Sheriff, in the office of the Sheriff in Macon, Bibb County, Georgia, and I further certify that I served Mrs. Kate C. Willingham by handing to and leaving a true and correct copy thereof with Chas. J. Bloch, Atty., personally, as attorney for Mrs. Kate C. Willingham, at Macon, Bibb County, Georgia.

E. B. DOYLE,
United States Marshal.
By P. P. CONNELL.
Deputy United States Marshal.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

No. 238. District Court of the United States, Middle District of Georgia. Prentiss M. Brown, Administrator, Office of Price Administration v. Mrs. Kate C. Willingham and J. R. Hicks, Jr. Summons in Civil Action. Returnable not later than twenty days after service. T. Nelson Parker, Ralph L. Quillian, L. P. Webb, Atlanta, Georgia, Attorneys for Plaintiff.

10 In United States District Court

Rule Nisi

Filed July 20, 1943

A complaint demanding a temporary restraining order, preliminary and final injunctions having been presented,

It is ordered that the same together with this order be filed and copies thereof be served upon the defendants;

It is further ordered that defendants and each of them show cause before the United States District Judge presiding in the Federal Court Room, Federal Building, Macon, Georgia, or at such other place as the Court may then be sitting, on the 24 day of July 1943 at ten o'clock, A. M. why a preliminary injunction should not be granted.

Dated at Savannah, Georgia, this 17th day of July 1943, at 12 o'clock A. M.

ARCHIBALD B. LOVETT,
United States Judge.

11 In United States District Court

Amendment to original complaint

Filed Aug. 16, 1943

Now comes Prentiss M. Brown, Administrator, Office of Price Administration, plaintiff in the above entitled cause, and with leave of Court first had, amends his original complaint heretofore filed as follows:

1. Plaintiff amends Paragraph 2 of the original complaint by striking the same in its entirety and substituting in lieu thereof the following:

"Pursuant to Section 205 (a) of the Act and pursuant to his right as an officer of the United States authorized to sue, and charged with the execution of the policy of Congress declared in the Act, the Price Administrator brings this action to restrain violations and attempted violations of, and to enforce compliance with, said Act and said Regulation as amended and to effectuate the public policy of a statute of the United States."

2. Plaintiff amends Paragraph 3 of the original complaint by adding thereto the following:

"as provided in Title 28 U. S. C. A., Section 41 (1)."

Wherefore, plaintiff prays that this, his amendment, be allowed.

T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney,
RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office,
L. P. WEBB,
L. P. Webb,
Chief Enforcement Attorney,
Atlanta District Office.
Office of Price Administration,
44 Pryor Street NE., Atlanta, Georgia.

GEORGE J. BURKE,
George J. Burke,
FLEMING JAMES,
Fleming James,
Of Counsel,
Office of Price Administration,
Federal Office Building No. 1,
Washington, D. C.,
Attorneys for Plaintiff.

12 In United States District Court

Order allowing amendment to complaint

Filed Aug. 17, 1943

The within and foregoing amendment having been presented,
It is ordered that the same be, and it is, hereby allowed, subject to objection and motion, this 17 day of August 1943.

BASCOM S. DEAVER,
United States District Judge.

13 In United States District Court

[Title omitted.]

Second amendment to original complaint and order allowing same

Filed Aug. 16, 1943

Now comes Prentiss M. Brown, Administrator, Office of Price Administration, complainant, and with leave of Court first had further amends his original complaint heretofore filed by adding thereto an agreed copy of the petition of Mrs. Kate C. Willingham to the Superior Court of Bibb County, Georgia, in the case of Mrs. Kate C. Willingham vs. Andrew J. Lyndon, Rent Director, No. 7508, Superior Court of Bibb County, Georgia, October Term, 1943, the temporary restraining order and rule to show cause entered by said Court in said case, all of which is hereto attached.

Wherefore, complainant prays that this, his amendment, be allowed.

HENRY B. TROUTMAN,
Henry B. Troutman,
Regional Attorney,
RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office,
L. P. WEBB,
Chief Enforcement, Attorney,
Atlanta District Office,
Office of Price Administration,
44 Pryor Street NE., Atlanta, Georgia.

GEORGE J. BURKE,
George J. Burke,
FLEMING JAMES,
Fleming James,
Of Counsel,
Office of Price Administration, Federal Office Building No. 1, Washington, D. C., Attorneys for Plaintiff.

Order

The above and foregoing amendment having been presented, It is ordered that the same be, and it is hereby, allowed, this August 16, 1943.

BASCOM S. DEAVER,
United States District Judge.

14 *Exhibit to second amendment to complaint*

GEORGIA, *Bibb County*:
To the Superior Court of Said County:

The petition of Mrs. Kate C. Willingham respectfully shows to the Court the following facts:

1. Andrew J. Lyndon is a resident of Bibb County, Georgia, and is herein named as a defendant in his capacity as Rent Director of the Macon, Georgia, Defense Rental Area, of the Office of Price Administration.

2. The defendant Andrew J. Lyndon was on or about July 1, 1942, appointed by Leon Henderson, then Price Administrator of the Office of Price Administration, Area Rent Director of the Macon, Georgia, Defense Rental Area of the Office of Price Administration and is now acting as such. Said appointment was made under the authority vested in the said Leon Henderson as such Administrator by the Emergency Price Control Act of 1942 (Public Law 421—77th Congress, Approved January 30, 1942). This Act will be hereinafter referred to as the Price Control Act.

3. Your petitioner in May, 1941, purchased that housing accommodation within the said Defense Rental Area known as No. 20 Arlington Place in the City of Macon, Bibb County, Georgia.

4. Immediately after purchasing said property, your petitioner expended a considerable sum of money in the improvement, alteration, and rebuilding of the said properties, spending therefor the sum of more than $3,000.00, and between April 1, 1941, and July 1, 1942, changed the housing accommodation so as to result in an increase in the number of dwelling units in such housing accommodation, establishing therein three apartments; one of which will be hereinafter referred to as lower left; another, lower right; and the other, upper.

15 5. On January 30, 1942, the Congress of the United States enacted the aforesaid Price Control Act, Section 2 (B) of which is in words and figures as follows:

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for,

and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.".

6. On or about April 28, 1942, Leon Henderson, then Administrator, issued a declaration setting forth the necessity for and recommendations with reference to the stabilization or reduction of rents for defense area housing accommodations within the Macon, Georgia, Defense Rental Area, comprising the Counties of Bibb, Houston, and Peach, of said State.

7. On June 30, 1942, rents for such accommodations within said defense area having not, in the judgment of the Administrator, been stabilized or reduced by State or local regulation or otherwise, in accordance with the recommendations, the Administrator, by Maximum Rent Regulation Number 26, established maximum rents for such accommodations.

8. Section 4 (A) of the said Regulation, which became effective July 1, 1942, provided for maximum rents for housing accom-

modations rented on April 1, 1941, should be the rent for such accommodations on that date.

9. The aforesaid housing accommodations were not rented on that date.

10. Section 4 (C) of the said Regulation provided as follows:

"For housing accommodations not rented on April 1, 1941, nor during the two months ending on that date, but rented prior to the effective date of this Maximum Rent Regulation, the first rent for such accommodations after April 1, 1941. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c)."

11. Section 4 (D) of the Regulation provides as follows:

"For (1) newly constructed housing accommodations without priority rating first rented after April 1, 1941, and before the effective date of this Maximum Rent Regulation, or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished, or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change; Provided, however, That, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c)."

12. Section 5 (C) of the Regulation provides as follows:

"The Administrator, at any time on his own initiative, or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) The maximum rent for housing accommodations under paragraphs (C), (D), or (G) of Section 4 is higher than the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941. * * *"

13. After the housing accommodations had been so changed, your petitioner first rented the upper apartment on July 24, 1941, for a monthly rental of $40.00, so that under the Regulation, the maximum rent for this apartment was $40.00 per month. On September 1, 1942, the present tenant thereof, C. C. Avera, rented this apartment at a monthly rental of $37.50.

14. After the housing accommodations had been so changed, your petitioner first rented the lower left apartment on June 24, 1941, to J. C. Barlow, at a monthly rental of $37.50 per month, so that the maximum rental for this apartment under the Regulation was $37.50 per month. The present tenant is Mrs. Lucy Asbill, who became such tenant on June 1, 1942, at the rental of $37.50 per month.

15. After the housing accommodations had been so changed, your petitioner furnished the lower right apartment, and the apartment was first rented to Lieutenant L. A. Young so furnished on July 9, 1941, at a monthly rental of $60.00 per month. The present tenant of the said furnished lower right apartment is Carlyle Earnest, who occupied it as such tenant on February 1, 1943, at a monthly rental of $55.00 per month.

16. On June 14, 1943, the said Rent Director gave to your petitioner a so-called "notice to landlord of proceedings on Rent Director's initiative" concerning the upper apartment of these housing accommodations and stated therein "The preliminary investigation by the Rent Director indicates that the maximum rent for the above housing accommodations should be decreased because: the above housing accommodations were not rented on April 1, 1941, and the first rent received, and as registered by the landlord, is in excess of that generally prevailing in this defense rental area on April 1, 1941, for comparable accommodations. Therefore, the Rent Director proposes to decrease the maximum rent from $40.00 per month to $27.50 per month, acting pursuant to Section 5 (C) of the Maximum Rent Regulation. In the event you wish to file objections to this proposed action, such objections must be filed within five days from the date of this notice, together with written evidence supporting your objec-
19 tions and the written evidence submitted in support thereof should be typed or legibly written, and the numbers of the housing accommodations and the docket number appearing on this notice should be placed at the top of the first page of the objections. If no objections and supporting evidence are filed within the above period, the Rent Director may enter an order decreasing the maximum rent."

17. A similar notice was on the same date given by the Rent Director with respect to the lower left apartment, except that it recited "The above housing accommodations were not rented on April 1, 1941, but were first rented on July 1, 1941, and the first rent received, and as registered by the landlord, is in excess of that generally prevailing in this defense rental area on April 1, 1941."

In that notice, the Rent Director proposes to decrease the maximum rent from $37.50 per month to $25.00 per month.

18. On June 15, 1943, a similar notice was given with respect to the lower right apartment, except that this notice contained the following language: "The above housing accommodation was not rented on April 1, 1941, but was first rented on July 1, 1941, and the first rent received, and as registered by the landlord, is in excess of that generally prevailing in this defense rental area on April 1, 1941, for comparable accommodations." And in that notice the rent director proposes to decrease the maximum rent from $60.00 per month to $37.50 per month.

19. Your petitioner duly furnished evidence justifying the rents being charged, but on July 5, 1943, the said Rent Director wrote your petitioner's attorneys that upon further consideration he saw no reason to change what was set forth in the notices described in the three preceding paragraphs, and that he would proceed to issue an order decreasing the rents as soon as practicable.

20. Your petitioner is advised and so charges that the orders contemplated by the Director so reducing the rents for your petitioner's properties have not been issued.

20 21. Your petitioner has no complete and adequate remedy in a Court of Law after the Rent Director proceeds to issue these orders. Your petitioner must comply with them at the risk of subjecting herself to heavy civil and criminal penalties under the provisions of the aforesaid Price Control Act.

22. Your petitioner charges that the Rent Director is without legal authority to interfere with her contractual relationships with her tenants and without legal authority to issue the orders which he contemplates issuing; but if he does so issue them, she will be forced to comply with them or else subject herself to the possibility of tremendous civil and criminal penalties under the aforesaid Price Control Act.

23. Your petitioner avers that Section 5 (C) (1) of Maximum Rent Regulation Number 26 hereinbefore set out in paragraph 12 of this bill is unconstitutional and void, for that:

(1) It would deprive your petitioner of her property without due process of law in violation of the Fifth Amendment to the Constitution of the United States;

(2) It seeks to delegate to the Administrator and his agents, legislative powers in violation of Article I, Section 1 of the Constitution of the United States;

(3) It seeks to delegate to the Administrator or his agent, the Macon Director, judicial powers in violation of Article —, Section — of the Constitution of the United States;

(4) The said portion of the Regulation is too vague and indefinite to be capable of enforcement according to the law of the land having in it no criterion or rules by which the Administrator

and his agents are to be guided in orders decreasing maximum rent otherwise allowable; the phrase "the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941" being vague, indefinite, and meaningless in the eyes of the law.

24. The aforesaid Maximum Rent Regulation, in Section 13 (2) thereof, provides:

21 "The term 'Administrator' means the Price Administrator of the Office of Price Administration, or the Rent Director, or such other person or persons as the Administrator may appoint or designate to carry out any of the duties delegated to him by the Act."

25. So it is, therefore, that in the case of a house first rented in this defense rental area after April 1, 1941, after having been substantially changed, the Congress of the United States has sought to delegate to the Administrator the power at any time, on his own initiative, or on application of the tenant, to order a decrease of the maximum rent otherwise allowable, on the ground that the maximum rent for housing accommodations prescribed in the Regulation for housing accommodations in a situation such as these were, is higher than the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941, and the Administrator, in turn, has sought by the issuance of the Regulation to delegate this power to defendant, the Rent Director.

26. Your petitioner avers that the order, if issued by the Rent Director, would deprive her of her property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

27. Your petitioner avers that if the contemplated orders were issued, such issuance would constitute the exercise by the Rent Director of powers delegated to him in violation of Article I, Section 1 of the Constitution of the United States and in violation of Article —, Section — of the Constitution of the United States.

28. Your petitioner avers that Section 2 (B) of the Price Control Act hereinabove cited and set out in full in paragraph 5 hereof, is unconstitutional and void, for that:

(a) The Congress has purported to bestow on the Administrator legislative power which it cannot delegate;

(b) The Act purports to give the Administrator the right to establish such maximum rent for housing accommoda-

22 tions as in his judgment will be generally fair and equitable, and will effectuate the purposes of the Act, and the Act establishes no criterion to govern the exercising of the discretion vested in the Administrator;

(c) The Act does not require any finding by the Administrator of the facts upon which his determination of the maximum rent for the plaintiff's property is based;

(d) The Administrator is not required by the Act to fix the maximum rent schedule on a basis which will provide a fair and reasonable return to property owners generally, or to your petitioner under the circumstances stated herein;

(e) The Act allows the Administrator, in fixing the maximum rent for the plaintiff's property, to reject, in his discretion, any standard or criterion mentioned by the Congress in the Act.

29. In these respects the Act is violative of Sections 1 and 8 of Article I of the Constitution of the United States.

30. Your petitioner asserts that the aforesaid Emergency Price Control Act and the aforesaid Maximum Rent Regulation Number 26 are repugnant to Sections 1 and 2 of Article III of the Constitution of the United States in the following respects:

(a) The Act seeks to vest in the Administrator power vested by the Constitution of the United States in the Judiciary;

(b) The Act fails to provide for the judicial ascertainment of the maximum rent to which the plaintiff is entitled;

(c) The Act fails to provide for the judicial ascertainment of the reasonable rent for the plaintiff's property;

(d) The Act constitutes an attempt by the Congress to usurp the powers of the Judiciary;

(e) The Act seeks to authorize the Administrator to determine the area within which he shall be allowed to fix the maximum rent, and the Congress has fixed no sufficient standard or criterion for the authority so vested in the Administrator.

31. The proposed orders would further be unconstitutional and void in that in issuing them the Rent Director would
23 be making no attempt to fix a rent for your petitioner's property which is fair and reasonable.

Wherefore, your petitioner prays:

1. That process may issue, requiring the defendant in his capacity as Rent Director to be and appear at the next term of this Court, to answer this complaint;

2. That said defendant as Rent Director and the Rent Director of the Macon, Georgia, Defense Rental Area be restrained and enjoined from issuing any order reducing the rents on the housing accommodations described herein, which rents are now being paid and received by your complainant;

3. That the defendant as Rent Director and the Rent Director of the Macon, Georgia, Defense Rental Area be restrained and enjoined from reducing the rent on the lower left apartment from $37.50 per month to $25.00 per month; and the upper apart-

ment from $40.00 per month to $27.50 per month; and the lower right apartment from $60.00 per month to $37.50 per month;

4. And for such other and further relief as to the Court may seem meet and proper.

HALL & BLOCH,
Petitioner's Attorneys.

GEORGIA, *Bibb County:*

You, A. R. Willingham, being duly sworn, depose and say that the complainant, Mrs. Kate C. Willingham, is your wife, that you are her agent, and that the averments of fact in the foregoing petition are true.

A. R. WILLINGHAM.

Sworn to and subscribed before me, this 13 day of July 1943,
M. S. THOMAS,
Notary Public, Bibb County, Georgia.

24 *Order*

The foregoing petition has been presented, considered, sanctioned, and ordered filed.

It is ordered that Andrew J. Lyndon as Rent Director of the Macon, Georgia, Defense Rental Area, and the Rent Director of the Macon, Georgia, Defense Rental Area, be restrained until further order of this Court from issuing any regulation, order, or directive, decreasing the rents now being charged by Mrs. Kate C. Willingham on the housing accommodations described in the bill.

It is further ordered that the Rent Director of the Macon, Georgia, Defense Rental Area show cause before me at the Court-house in Macon, Georgia, at 10 o'clock, A. M., on the 6th day of September 1943, why he should not be enjoined as prayed.

In open Court, this 14th day of July 1943.

MALCOLM D. JONES,
Judge, Superior Courts, Macon Circuit.

25 In United States District Court

Answer and motion to dismiss of Mrs. Kate C. Willingham

Filed Aug. 4, 1943

Comes now the defendant, Mrs. Kate C. Willingham, and files this her defense in the case stated, and for grounds thereof says:

1. The bill fails to state a cause of action against defendant upon which relief can be granted.

2. An injunction should not be granted in this cause for the reason that such grant would be violative of Section 265 of the Judicial Code (United States Code, Annotated, Title 28, Section 378).

3. Even if the Court has jurisdiction to grant an injunction in this cause, it should not for the reason that the defendant has not engaged in acts and practices which constitute violations and/or attempted violations of the Emergency Price Control Act of 1942, but has simply asserted her rights as a citizen in the State Courts of Georgia to test the validity of the Emergency Price Control Act of 1942.

4. Further responding and answering the complaint, this defendant denies Paragraph 1 thereof, and unqualifiedly asserts that she has not engaged in acts and practices which constitute violations and attempted violations of the Emergency Price Control Act of 1942, nor has she engaged in acts and practices which constitute violations and/or attempted violations of Maximum Rent Regulation Number 26.

5. Answering paragraph 2 thereof, this defendant says that Section 205 (A) of the Emergency Price Control Act does not confer jurisdiction of this cause upon this Honorable Court for the reason that this defendant has not engaged in nor is she about to engage in any acts or practices which constitute or will constitute a violation of any provision of Section 4 of the Act.

She has not demanded or received any rent for housing accommodations, or otherwise done or omitted to do any act in
26 violation of any regulation or order promulgated under Section 2 of the Act.

She is seeking in the State Courts of Georgia to restrain the issuance of an order which, if issued, will deprive her of her constitutional and legal rights. She is simply seeking to test, in the Courts of the nation, the validity of an Act of Congress.

6. This defendant denies that jurisdiction of this action is conferred upon the Court by Section 205 of the Act, and denies that jurisdiction is conferred upon the Court by any general law or general principle of equity.

7. The allegations contained in paragraph 4 of the bill are admitted.

8. The allegations of paragraph 5 of the bill are admitted.

9. The allegations of fact in paragraph 6 of the bill are admitted.

However, this defendant denies that the Rent Director had any legal right to decrease the rents for the housing accommodations described in said paragraph 6. The said Rent Director is claiming that right under the provisions of Section 5 (C) (1)

of Maximum Rent Regulation Number 26. This defendant has asserted in the State Court that Section 5 (C) (1) of Maximum Rent Regulation Number 26, which provides:

"The Administrator, at any time on his own initiative or on application of a tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that: 1: the maximum rent for housing accommodations in Paragraphs C, D, or G, of Section 4, is higher than the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941 * * *

is unconstitutional and void for that: (a): it would deprive this defendant of her property without due process of law in
27 violation of the Fifth Amendment to the Constitution of the United States; (b): it seeks to delegate to the Administrator and his agents legislative powers in violation of Article I, Section 1 of the Constitution of the United States; (c): it seeks to delegate to the Administrator or his agent, the Macon Director, judicial powers in violation of Article III, Section 1 of the Constitution of the United States; (d); the said portion of the Regulation is too vague and indefinite to be capable of enforcement according to the law of the land, having in it no criterion or rules by which the Administrator and his agents are to be guided in orders decreasing maximum rent otherwise allowable; the phrase "the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941" being vague, indefinite, and meaningless in the eyes of the law.

This defendant asserts in this Court that the aforesaid provisions of the aforesaid Regulation are for the same reasons unconstitutional and void as stated in this paragraph.

10. The allegations of paragraph 7 of the bill are substantially correct, except that the petition described therein was not filed before the expiration of said period of five days.

11. Paragraph 8 of the bill is admitted.

12. Paragraph 9 of the bill is expressly denied. The Area Rent Director has not fixed and determined rents for the housing accommodations described in the bill pursuant to lawful authority. He simply proposed to fix rents therefor. Whereupon your petitioner filed in the Superior Court of Bibb County, Georgia, her bill seeking to enjoin him from so doing, for the reasons stated in the bill which will be presented to the Court.

13. Paragraph 10 of the bill is expressly denied. This defendant asserts that the Superior Court of Bibb County, Georgia, has jurisdiction to entertain the described petition and to issue an order thereon. The question of whether or not the Superior Court

of Bibb County, Georgia, has jurisdiction to entertain the
28 said suit is for determination by the Superior Court of Bibb County, Georgia. Section 204 (D) of the Emergency Price Control Act of 1942 does, in its terms, seek to divest the Superior Court of Bibb County, Georgia, and this Court and all other Courts except the Emergency Court of Appeals and the Supreme Court of the United States of jurisdiction to determine the constitutionality of any regulation or order issued under the terms of the Emergency Price Control Act, or to stay, restrain, enjoin, or set aside in whole or in part any provision of the said Act. This defendant asserts that the Congress of the United States has no constitutional power to enact any such legislation, and that therefore the aforesaid portion of Section 204 (D) of the Emergency Price Control Act of 1942 is unconstitutional and void.

Article VI, Paragraph 2, of the Constitution of the United States, provides that the Constitution of the United States and the laws of the Unites States which shall be made in pursuance thereof shall be the supreme law of the land. The Constitution of the United States is therefore the Supreme law of the land and if a law of the United States is not enacted pursuant to the Constitution, such law is void, and it is the right and duty of any Court so to declare it. This is an inherent power for all Courts. The Congress of the United States did not grant to the Courts of the States nor to this Court the right and duty of declaring law to be contrary to the Constitution, and it cannot deprive the Courts of the States and this Court of that right and that duty. That right and that duty are conferred by the Constitution of the United States, and only the Constitution can deprive the Courts of that right and that duty. The Congress of the United States cannot.

14. Your defendant is advised that Paragraph 11 of the bill contains no allegation of fact that she is required to answer.

15. Paragraph 12 of the bill is denied. All matters which are set up in this bill can be set up in answer to the bill previously filed by this defendant in the Superior Court of Bibb County, Georgia.

Wherefore, this defendant respectfully prays:

29 (A) That the bill be dismissed;

(B) That it be held by this Honorable Court that it has no jurisdiction to enjoin the proceeding in the State Court;

(C) That even if this Court should decide that it has jurisdiction to enjoin the proceeding in the State Court, that this Court do not grant such injunction;

(D) That if this Court should decide to take jurisdiction of this cause, that it decree that the portions of Section 204 (D) of the Emergency Control Act hereinbefore referred to be declared unconstitutional and void and beyond the powers of Congress, and that this Court decree that the complainant and his officers and agents, particularly the Rent Director of the Macon, Georgia, Defense Rental Area, be restrained and enjoined from issuing any orders seeking to reduce the rents described in the bill and described in the bill in the Superior Court of Bibb County, Georgia, for the reasons set out in that bill.

HALL & BLOCH,
Attorneys for Defendant.

Of Counsel,
CHARLES J. BLOCH.

30 [Duly sworn to by *A. R. Willingham;* jurat omitted in printing.]

31 In United States District Court

Answer and motion to dismiss of J. R. Hicks, Jr.

Filed Aug. 4, 1943

Comes now J. R. Hicks, Jr., one of the defendants in the case stated, and in response and answer thereto, says:

1. For want of sufficient information he can neither admit nor deny the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12 of the bill.

2. He admits the allegations of Paragraph 8 of the bill.

3. This defendant avers that no injunction should be issued, restraining and enjoining him or his Deputies from executing or attempting to execute, by service or otherwise, any order which may be entered or promulgated by the Judge of the Superior Court of Bibb County, Georgia.

4. The bill fails to state a cause of action against this defendant upon which relief can be granted.

Wherefore, this defendant prays that the bill be dismissed, and that no injunction be granted as to him.

HALL & BLOCH,
Attorneys for Defendant J. R. Hicks, Jr.

Of Counsel,
ELLSWORTH HALL, JR.

32 In United States District Court

Amendment to the defensive pleading of Mrs. Kate C. Willingham

Filed Aug. 30, 1943

Comes now Mrs. Kate C. Willingham, one of the defendants in the case stated, and amends her defensive pleading in the case stated as follows:

1. The complainant has amended his original complaint and invoked the jurisdiction of this Court as a Court of Equity. Its jurisdiction, therefore, extends to the determination of all questions involved in the case.

The Emergency Price Control Act of 1942, referred to in paragraph No. 1 of the complaint, contains Section 2 (B), which is in words and figures as follows:

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendation, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense
33 activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regu-

lations and orders, the Administrator shall to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area."

2. This defendant avers that Section 2 (B) of the Emergency Price Control Act hereinabove cited and set out in full in the preceding paragraph is unconstitutional and void, for that:

(a) The Congress has purported to bestow on the Administrator legislative power which it cannot delegate;

(b) The Act purports to give the Administrator the right to establish such maximum rent for housing accommodations as in his judgment will be generally fair and equitable, and will effectuate the purposes of the Act, and the Act establishes no criterion to govern the exercising of the discretion vested in the Administrator;

(c) The Act does not require any finding by the Administrator of the facts upon which his determination of the maximum rent for the defendant's property is based;

(d) The Administrator is not required by the Act to fix the maximum rent schedule on a basis which will provide a fair and reasonable return to property owners generally, or to this defendant;

34 (e) The Act allows the Administrator, in fixing a maximum rent, to reject in his discretion any standard or criterion mentioned by the Congress in the Act.

In this respect the Act is violative of Sections 1 and 8 of Article I of the Constitution of the United States.

3. This defendant shows that one of the provisions of Maximum Rent Regulation Number 26, referred to in paragraph 1 of the complaint, is Section 4 (C), which is as follows:

For housing accommodations not rented on April 1, 1941 nor during the two months ending on that date, but rented prior to the effective date of this Maximum Rent Regulation, the first rent for such accommodations after April 1, 1941. The Administrator may order a decrease in the maximum rent as provided in Section 5 (C)."

4. Another provision of the aforesaid Regulation is Section 4 (D), which is as follows:

"For (1) newly constructed housing accommodations without priority rating first rented after April 1, 1941 and before the effective date of this Maximum Rent Regulation, or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished, or from fully furnished, or from fully furnished to unfurnished,

or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance; the first rent for such accommodations after such construction or change; Provided, however, That, where such first rent was fixed by a
35 lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c)."

5. Another provision of the aforesaid Regulation is Section 5 (C) (1), which is as follows:

"The Administrator, at any time on his own initiative, or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

"(1) The maximum rent for housing accommodations under paragraphs (C), (D), or (G) of Section 4 is higher than the rent generally prevailing in the defense rental area for comparable housing accommodations on April 1, 1941 * * *."

This defendant avers that Section 5 (C) (1) of Maximum Rent Regulation Number 26 hereinfore set out is unconstitutional and void, for that:

(1) It would deprive this defendant of her property without due process of law in violation of the Fifth Amendment to the Constitution of the United ;

(2) It seeks to delegate to the Administrator and his agents legislative powers in violation of Article I, Section 1, of the Constitution of the United States;

(3) It seeks to delegate to the Administrator or his agents judicial powers in violation of Article III Section 1, of the Constitution of the United States;

(4) The said portion of the Regulation is too vague and indefinite to be capable of enforcement according to the law of the land, having in it no criterion or rules by which the Administrator and his agents are to be guided in orders decreasing maximum rent otherwise allowable; the phrase "the rent generally prevailing in the defense-rental area for comparable housing accommodations on April 1, 1941" being too vague, indefinite, and meaningless to form the basis for the exercise of any legal action by the Administrator;

36 (5) The said portion of the Regulation is not in accordance with the law.

6. This defendant invoked the jurisdiction of the Superior Court of Bibb County, Georgia, charging that the Rent Director was without legal authority to interfere with her contractual relationships with her tenants.

7. Under the provisions of Article VI, Section 1, of the Constitution of the United States, that Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land, and the Judges in every State shall be bound thereby.

8. Under the provisions of Article VI, Section 3, of the Constitution of the United States, all the executive and judicial officers both of the United States and of the several States shall be bound by oath or affirmation to support the Constitution of the United States.

9. Under the provisions of Article VI, Paragraph 2, of the Constitution of the United States, the Congress of the United States has no authority to enact any law which would deprive the Courts of the States of the right and duty to declare a law unconstitutional, and has no constitutional right in this respect, to limit the jurisdiction of the Court of a State.

10. The Congress of the United States in passing the Emergency Price Control Act did not seek to divest the State Courts of all jurisdiction as to causes of action arising under that Act; on the contrary, by the provisions of Sections 205 (A), 205 (C), and 205 (E) thereof conferred jurisdiction upon the State Courts in actions for injunction brought by the Administrator and in actions for penalties brought by a tenant or the Administrator.

11. In Section 204 (D) of the Emergency Price Control Act is the following language:

37 "Except as provided in this section, no Court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order or price schedule, or to stay, restrain, enjoin, or set aside in whole or in part any provision of this Act authorizing the issuance of such regulations or orders or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

The defendant asserts the foregoing quoted portion of Section 204 (D) of the Emergency Price Control Act as applied to a State Court, is unconstitutional and void as being in violation of the supremacy clause of the Constitution of the United States contained in Article VI, Paragraph 2, thereof.

If a law of the United States shall not be made pursuant to the Constitution of the United States, it is the right and duty of the Court so to declare, and the Congress of the United States has no power to deprive the Court of that right.

12. The complainant in this case, by invoking the jurisdiction of this Court, has waived the aforesaid provisions of Section 204 (D) of the Emergency Price Control Act.

13. This defendant avers that Section 2 (B) of the Emergency Price Control Act of 1942, set out in full in paragraph one of this

amendment, is unconstitutional and void and cannot serve as a basis for any relief to the complainant for the reasons assigned in paragraph 2 of this amendment.

14. Defendant asserts that the Maximum Rent Regulation Number 26, and particularly paragraphs 4(C), 4 (D), and 5 (C) (1) thereof, are unconstitutional and void for the reason set out in paragraph 5 of this amendment, and cannot serve as a basis for any relief to the complainant.

38 15. Complainant avers that if the Rent Director were to issue the proposed order, detailed in the original defensive pleadings of this defendant, such order would be unconstitutional and void for that the Congress of the United States has not delegated to the "Rent Director" the power which he seeks to exercise and the act of the Price Administrator in seeking to delegate that power to the Rent Director is unconstitutional and void for that:

(a) The Administrator seeks to delegate to the Rent Director powers which he was not authorized to delegate under the Emergency Price Control Act;

(b) Such order would deprive this defendant of her property without due process of law in violation of the Fifth Amendment to the Constitution of the United States;

(c) The issuance of such order would be the exercise of legislative powers in violation of Article I, Section I, of the Constitution of the United States;

(d) The issuance of such order would be the exercise of judicial power in violation of Article III, Section 1, of the Constitution of the United States.

Wherefore, this defendant prays:

(1) That this amendment be allowed;

(2) That the bill as amended be dismissed;

(3) That it be held by this Honorable Court that it has no jurisdiction to enjoin a proceeding in the State Court;

(4) That even if this Court should decide that it has jurisdiction to enjoin the proceeding in the State Court, that this Court do not grant such injunction, but allow the case to proceed in the State Court;

(5) That this Court decree that Section 2 (B) of the Emergency Price Control Act is unconstitutional and void and beyond the powers of the Congress; that Maximum Rent Regulation Number 26 and particularly Section 5 (C) (1) thereof are unconstitutional and void, and beyond the powers of the Congress;

39 that the portions of Section 204 (D) of the Emergency Price Control Act set out in paragraph 11 of this amendment are unconstitutional and void, particularly as applied to a State Court and as applied to this Court under the circumstances

of this case and that therefore the complainant can obtain no relief based upon this Act and Regulation.

HALL & BLOCH,
Attorneys for Defendant.
CHARLES J. BLOCH,
Of Counsel.

Amendment allowed in Open Court, this August 30, 1943.

BASCOM S. DEAVER,
U. S. Judge.

40 In the District Court of the United States

Order sustaining motion to dismiss

September 1, 1943

This case having been heard on Defendants' motion to dismiss the action, after argument of counsel thereon,

It is ordered that said motion to dismiss be sustained on the ground that the rent provisions of the Emergency Price Control Act of 1942 and the regulations promulgated pursuant thereto are unconstitutional and invalid, for the reasons stated in the opinion of this court in the case of John W. Payne v. J. H. Griffin, No. 89, Thomasville Division, Middle District of Georgia, a copy of which is filed as the opinion in this case and made a part of the record in this case.

The action is hereby dismissed.

This the 1st day of September 1943.

BASCOM S. DEAVER,
United States District Judge.

41 In the District Court of the United States for the Middle District of Georgia, Thomasville Division

Civil Action No. 89

JOHN W. PAYNE, PLAINTIFF

v.

J. H. GRIFFIN, DEFENDANT

Opinion

August 30, 1943

DEAVER, District Judge:

This suit was brought by a tenant against a landlord under Section 205 (e) of the Emergency Price Control Act of 1942 to

recover a money judgment for an alleged violation of a regulation as therein provided. Defendant moved to dismiss on the ground that the act and the regulation creating the right of action are unconstitutional and void. The plaintiff contends that this court has no jurisdiction to pass upon the constitutionality of either the act or the regulation. The Administrator came into the case by intervention. He admits jurisdiction to determine the constitutionality of the act but denies jurisdiction to question the validity of the regulation.

I.

JURISDICTION

The act confers jurisdiction to try this case but in Section 204 (d) says that

The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider
the validity of any such regulation, order, or price schedule,
42 or to stay, restrain, enjoin, or set aside in whole or in part,
any provisions of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

By Article 3, Section 1, of the constitution, the judicial power of the United States is vested in a Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

A district court can entertain only such cases as Congress gives it jurisdiction to try. Jurisdiction to try any case or class of cases may be withheld altogether. But once congress confers jurisdiction to try a case it cannot withhold power to decide the case according to the applicable law. The contention of the plaintiff is contrary to the decisions of the Supreme Court from Marbury v. Madison, 5 U. S. 137, down through the years to the present time.

If congress prohibits an inferior court from trying a case, the court cannot entertain it and, if congress confers jurisdiction to try a case, the court cannot refuse to accept jurisdiction. It is bound to hear and decide the case. But, having directed the court to try the case, congress has no authority also to direct the court to

render judgment in accordance with the terms of a void act in disregard of the supreme law of the land. The distinction is that, while congress can determine what cases a court can try, it cannot direct what law shall control the decision.

In Adkins v. Children's Hospital, 261 U. S. 525, 544 is the following language:

"The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the respository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority and if it conflict with the Constitution must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power—that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case, there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject
43 that of an inferior act of legislation which, transcending the Constitution, is of no effect and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."

In *Smyth* v. *Ames*, 169 U. S. 466, 527, the court said:

"The idea that any legislature, state or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation."

See Muskrat v. United States, 219 U. S. 346, 359; 2 Story on the Constitution, p. 451, citing Osborn v. Bank, 9 Wheat, 819.

Again, the Supreme Court, in United States v. Butler, 297 U, S. 1, 62, said:

"There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land, ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in

the courts as not conforming to the constitutional mandate the judicial branch of the Government has only one duty, to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends."

The Supreme Court, in Carter v. Carter Coal Company, 298 U. S. 238, 296, again spoke, as follows:

"The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And
44 a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins* v. *Children's Hospital*, 261 U. S. 525, 544; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter* v. *United States*, 295 U. S. 495, 549–550."

"Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not." Chicago, etc., Railway Co. v. Wellman, 143 U. S. 339, 345.

An unconstitutional law is no law and no court is bound to enforce it. 11 Am. Jur. p. 827, Sec. 148.

If a court has jurisdiction to try a case, it has inherent power to determine whether an act on which the existence of the right of action depends, conforms to the Constitution. See 11 Am. Jur. p. 709, Secs. 86, 88, and cases cited in support of the text.

Decisions might be multiplied almost without number but those cited are sufficient to show that the power of Congress to limit the jurisdiction of inferior courts refers to the character of cases

and does not include power to limit the law to be applied in the trial of cases which the court has jurisdiction to hear. See In Re American States Public Service Co., 12 F. Supp. 667, 690.

A contrary conclusion would enable congress to require courts to enforce any act though clearly void. "Congress have not power to give original jurisdiction to the Supreme Court in cases other than those described in the constitution." Marbury v. Madison, 5 U. S. 137 (2). If Congress can withhold power to determine the validity of an act from one inferior court, it could withhold such power from all inferior courts. It would follow that Congress could require an inferior court to render judgment in a case depending entirely on a void statute and prevent its validity from being passed upon by any inferior court. In a case, therefore, of which the Supreme Court has no original jurisdiction, the validity of the act could never be questioned in any court.

It is apparently well settled that, while Congress can prohibit an inferior court from trying a case at all, it cannot authorize such a court to try a case and at the same time prevent the court from trying it according to the supreme law of the land. "Determination of a constitutional question is necessary and proper whenever it is essential to the decision of the case, as where the right of a party is founded solely on a statute, the validity of which is attacked." 16 C. J. S. p. 214.

The contention of the Administrator stands no better. In this case plaintiff is asking a judgment for money against the defendant. If a right to such judgment exists at all, it exists solely by reason of the statute and the regulation made pursuant to the statute. If the statute is valid and the regulation is valid, they together create a cause of action for violation of the regulation. If the statute is not valid, the regulation is nothing and no cause of action exists. Jurisdiction to try the case is jurisdiction to determine whether plaintiff by law is entitled to recover. To decide that question the court is bound to ascertain what law governs. If the regulation is valid, it has the force of law but it is no law apart from the statute itself. The statute and the regulation are interdependent in creating the cause of action and there is no cause of action unless both are valid. Whether either is valid depends upon its conformity to the supreme law of the land. If by that law the statute is void, the regulation falls and there is no law authorizing judgment in favor of plaintiff.

46 The very question, therefore, which Congress forces this court to determine, by conferring jurisdiction to try the case, namely, the question of whether plaintiff by law is entitled to recover, depends upon the validity of the statute which creates

the cause of action. The authorities applicable to the contention of the plaintiff are equally applicable to the contention of the Administrator.

When Congress withholds from a court equity jurisdiction to enjoin the enforcement of a regulation, it does not call upon the court to act, but indeed, prohibits it from entertaining the suit at all. But when Congress directs a court to enforce a regulation by rendering a money judgment, the court is bound to decide whether such judgment is authorized by law, and a regulation made in pursuance of a statute in conflict with the constitution is not law. See Lockerty v. Phillips, 63 S. Ct. 1019, 1023. See also St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 (13) holding that:

"Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

II

CONSTITUTIONALITY

The attack here made relates, not to the entire act, but only to the rent provisions. The war powers of Congress are not questioned. The power of Congress to enact a statute controlling rents in time of war is not denied. One of the contentions is that Congress has not passed a statute regulating rents, to be administered by an administrator, but has undertaken to authorize the administrator so to legislate.

To urge that Article 1, Section 8, of the Constitution settles the matter is to miss the question. That Article grants powers but it does not authorize Congress to delegate those powers.

47 Congress has power to enact a law to become effective when certain conditions come into existence and may delegate to an administrative officer the authority to determine, in accordance with the standard laid down by Congress, when the conditions have come into existence. Or, Congress may declare a policy and fix a definite standard by which the administrator is to be controlled and authorize him to make subordinate rules for the administration of the act. However, Congress cannot permit the administrator to determine what the law shall be.

In the present statute Congress declares that, for reasons set out, it is good policy to stabilize prices including rents. It then provides for an administrator and authorizes him to "issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act." The

administrator is authorized, but not required, to make such investigation as he deems necessary or proper to assist him in making and enforcing regulations, and may take official notice of economic data and other facts. As to rent, the act defines a defense-rental area as the District of Columbia and any area designated by the administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act. Under Section 2 (b), the administrator may, by regulation, fix such maximum rents as in his judgment will be generally fair and equitable and will effectuate the purposes of the Act. So far as practicable, the administrator is to ascertain and give due consideration to rents prevailing about April 1, 1941. The Act provides for protest within 60 days and after that the regulation is conclusive and no protest can be made except on new grounds arising after the 60-day period.

In 11 Am. Jur. p. 957, Sec. 240, it is said that:

"Thus, the authority attempted to be delegated to the President by Congress under the National Industrial Recovery Act, limiting his powers in no way and extending his discretion
48 to all the varieties of laws which he might deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country, thereby allowing him to impose within his discretion his own conditions to effectuate a so-called 'policy,' which was merely a statement of opinion, was such a sweeping delegation of powers properly exercisable only by the legislature itself as to fall beyond the pale of constitutional limits. 'There can be no grant to the executive of any roving commission to inquire into evils and, upon discovering them, to do anything he pleases to correct them.'"

As to delegation of legislative power, the Supreme Court, in Field & Co. v. Clark, 143 U. S. 649, 694, quoted the following language:

"The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend."

In Wichita R. R. v. Pub. Utilities Comm., 260 U. S. 48, the court was dealing with the power of an administrative body to fix rates. The act there required the Commission, after hearing and investigation, to find existing rates to be unreasonable before reducing them but there was no requirement that the order should contain the finding. (See Mahler v. Eby, 264 U. S. 32, 44). The court held that delegation of pure legislative power is unconstitutional and said that, in creating such an adminis-

trative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision and that the agency must pursue the procedure and rules and show substantial compliance therewith to give validity to its action. The court held also that lack of an express finding could not be supplied by inference. So, in that case, the Commission, after hearing, could not, without an express finding of unreasonableness, fix rates which, in its judgment, would be fair and reasonable.

The same principle, in Hampton & Co. v. United States,
49 276 U. S. 394, 409, is applied to fixing customs. There however, specific rules were laid down to govern the President and findings of fact were required.

Prerequisites to action must be stated and compliance must be shown. If authority depends upon determination of facts, that determination must be shown. Panama Refining Co. v. Ryan, 293 U. S. 388 (11, 12).

The court, in St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38 (4), held that:

"In the fixing of rates—a legislative act—the legislature has a broad discretion which it may exercise directly or through a legislative agency authorized to act in accordance with standards prescribed by the legislature."

Headnote (7) of that case says:

"Where the legislature appoints a rate-fixing agent to act within the limits of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily."

Again, in Morgan v. United States, 304 U. S. 1, 14, the court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing'—essential alike to the legal validity of the administrative regulation and to

the maintenance of public confidence in the value and soundness of this important governmental process."

Rate-making is a species of price fixing. "The problem of fixing reasonable prices for bituminous coal cannot be differentiated legally from the task of fixing rates under the Interstate Commerce Act (41 Stat. 484, 49 U. S. C. Sec. 15) and the Packers and Stockyards Act (42 Stat. 166, 7 U. S. C. Sec. 211). The latter provide the standard of 'just and reasonable' to guide the administrative body in the rate-making process."

50 In rate cases the administrative body is required not only to afford an opportunity for hearing but also to make findings of fact to support its conclusion that the rates are reasonable and just. See Mahler v. Eby, 264 U. S. 32, 44. That is said to be necessary to prevent the delegation of such power from being unconstitutional. If this act provided for a hearing and findings of fact and a conclusion that from those facts the rents fixed are, in the judgment of the administrator equitable and fair, then the Act might be construed to say that the maximum rent in any case shall be whatever the administrator finds to be equitable and fair.

Fixing fair and equitable prices is a legislative function. What the decisions mean is that, if Congress authorizes an administrator to fix such prices as he thinks are fair and equitable, it delegates legislative power, but if Congress says, in effect, that prices fixed on the basis of certain ascertained facts would be fair and equitable, and authorizes an administrator to ascertain those facts and to make a regulation containing, not his uncontrolled opinion, but the result of those facts, then Congress by designating the controlling facts fixes the prices and the administrator acts only as agent of congress in finding the facts and declaring the result. That is the reason why the price fixing acts require express findings of fact after hearing and that is why the Supreme Court says that express findings after hearing are necessary in order to prevent the authority of the administrator from being a pure delegation of legislative power contrary to the Constitution.

There is nothing to the contrary in the Opp Cotton Mills case, 312 U. S. 126. On page 145 of the opinion, the court says that the essentials of legislative function "are preserved when congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative
51 agency, it ordains that its statutory command is to be effective." Throughout that case it is apparent that congress must declare the ultimate fact upon which a statute is to become operative and it may then leave the determination of the ultimate

fact to any administrative agent, but that, where, in order to ascertain the existence of the ultimate fact, it is necessary for such agent to exercise his judgment upon intermediate or subsidiary facts, he must make a record or express findings of the intermediate facts, so that "congress, the courts and the public can ascertain whether the agency has conformed to the standards which congress has prescribed." The court on page 145 of the opinion, says that congress need not itself find all the facts intermediate or subsidiary to the basic conclusion or ultimate fact in fixing a tariff rate, or a railroad rate or rate of wages. But the reasoning in that case seems to demand that the administrator expressly set out the subsidiary or intermediate facts from which he arrives at the "basic conclusions of fact," which the court says congress must specify. That is in line with other decisions of the Supreme Court which hold that express findings are essential to the validity of the regulation. The reason congress does not hear the subsidiary facts is because it is impossible or impracticable. If Congress heard the intermediate facts, it could arrive at the basic or ultimate conclusion and on that basis fix a price in the statute. But where, for practical reasons, congress only specifies the basic or ultimate fact and must rely upon an administrator to ascertain the existence of that basic fact, then, the Supreme Court says, the Constitution and fair play both require the administrator to record the subsidiary facts.

In the present case, the administrator, though contending that findings are not necessary, says he has made findings. That depends, of course, upon his definition of findings. Without reciting all the statements in the rent Declaration and in the
52 Regulation, it is sufficient to say that those documents, in effect, simply declare that in the administrator's judgment, the basic facts exist and do not contain findings of subsidiary facts such as the Supreme Court has held necessary.

If the requirement that the rent fixed shall be what the administrator thinks is "fair and equitable" be a standard, his so-called findings simply state that in his judgment they are fair and equitable without containing the intermediate facts which caused him to think so. The argument presented for the administrator creates the impression that the administrator construes the act to require him to ascertain prevailing rents at some base date and, with some adjustments, to fix those rents by regulation as fair and equitable. His apparent construction of the act is emphasized by the fact that by other regulations he included the entire United States as defense rental areas and froze rents as of his base date. The recent case of Brown, Admr. v. Ayello, 50 F. Supp. 391, seems to adopt somewhat the same view. It says

that "Congress recognized that it could not arbitrarily set a date for the fixing of prices, because of the inequality that would be bound to result. By naming a period for the guidance of the Administrator in fixing prices it set as definite a standard as practicable." With reference to the opinion of the Administrator and of the court in the Ayello case, it is submitted that such is not the meaning of the Act. Congress did not declare that fair and equitable rents should be such rents as prevailed on a base date and direct the Administrator to ascertain what such prevailing rents were. Prevailing rent is just one of the subsidiary facts to be considered, so far as practicable, in arriving at the basic fact, namely, what rent would be fair and equitable. Prevailing rent, therefore, is not a standard at all, but a subsidiary fact which, along with all other subsidiary facts, the administrator is bound to find and record. Moreover, the standard, which would prevent the act from being unconstitutional is not
53 rents which in the judgment of the administrator are fair and equitable, but rents shown by ascertained and recorded facts to be fair and equitable.

The administrator urges further that, even if findings were necessary, they "may be supplied by implication." The contrary is held in the Wichita R. R. case, supra.

Moreover, the act would have to leave open for judicial determination the question of due process. See Power Commission v. Pipeline Co., 315 U. S. 575 (4).

After the administrator fixes the maximum rent, the provision for protest and appeal, it is said, affords due process. It might do so theoretically but not actually. In the Morgan case, supra, the court held that "In administrative proceedings of a quasi-judicial character, the liberty and property of the citizen must be protected by the rudimentary requirements of fair play. These demand a fair and open hearing."

People know that they are charged with knowledge of the law, but, without actually knowing the law, they have been accustomed to make defenses only when the law is sought to be enforced against them. An act which permits an administrator to fix prices without notice or hearing and then makes those prices conclusive after 60 days would, in practical operation, have the effect of cutting off defenses. That is especially true where the procedure provided makes it too inconvenient and expensive for individuals in small cases to follow the procedure. Ordinarily, when Congress itself passes a law, it does not try to make the law immune from attack or prohibit defenses but permits defenses to be made at any time an individual is proceeded against under the law. If the matter is subject to very strict construction,

then this act may technically provide due process, but practically it would result in entrapping a large number of citizens. That might not constitute the fair play intended by the Supreme Court.

54 The Act, in effect, says that, for reasons set out, it is good policy to control rents during the war and then authorizes the administrator to fix such maximum rents as he thinks will be generally fair and equitable and will effectuate the purposes of the Act.

An express finding, if the administrator were required to make, that the prices fixed would effectuate the purposes of the Act, would not be a standard but a mere statement of opinion. Schechter Corp. v. United States, 295 U. S. 495 (8).

Under this Act, the administrator can fix rents without notice or hearing and without express findings of fact and with only such investigation as in his discretion he may decide to make. The standard is not what Congress thinks would be fair and equitable under designated facts but what the administrator, in his uncontrolled discretion, thinks would be fair and equitable.

Then, when the regulation is sought to be enforced against a defendant and he is forced into a local court, he finds that he cannot attack the validity of the act or the regulation and that, if 60 days have elapsed, he cannot question whether the regulation is fair and equitable because it has become conclusive without notice or opportunity to be heard, except such notice as he is charged with by a law which, in effect, says that, though no proceeding has been instituted against him, he must protest in advance and appeal to a distant court or be concluded.

Conditions created by the war do not enlarge constitutional power. Congress must establish the standards of legal obligation. Schechter Corp. v. United States, 295 U. S. 495, 530.

It is easy for government agencies, some of which apparently are opposed to any limitation of their powers and are impatient of all constitutional restrictions, to admit the limitations

55 stated in the constitution and then to ridicule the idea that their powers are affected by them. The act of the administrator in designating the entire United States as defense-rental areas affords an illustration of the dangerous tendency to assume and exercise powers never intended by Congress to be granted or by the Constitution to be exercised. That tendency makes apparent the wisdom of the rule laid down by the Supreme Court that any administrator in the exercise of his authority should be required to make express findings of the subsidiary facts on which he acts. Administrative agents have become so numerous and government by regulation so extensive that courts, it is to be

feared, may gradually yield to their unceasing insistence and permit the rights of the people to be destroyed and subject them to control by regulations, which result was never intended by the constitution, apparently regarded by some agencies as an outmoded instrument.

That rents should be controlled during the war cannot be reasonably doubted, but courts have no power to determine policy. To preserve the permanent constitutional liberties of the people is the sworn duty of courts (Marbury v. Madison, 5 U. S. 137, 178) and is not to be compared with some good end which might result from permitting government agencies to exercise unauthorized power by regulation because of some temporary emergency.

In the absence of some controlling decision a court cannot avoid the responsibility of deciding according to its own conviction. The conviction of this court is that the rent provisions of this Act are invalid.

56 In United States District Court

Motion for Amendment

Filed Sept. 14, 1943

Now comes Prentiss M. Brown, Administrator, Office of Price Administration, complainant, respectfully showing unto the Court as follows:

1. The order entered by the Court on September 1, 1943, dismissing this action orders that the motion to dismiss be sustained for the reasons stated in the opinion of this Court in the case of John W. Payne vs. J. H. Griffin, No. 89, Thomasville Division, Middle District of Georgia, a copy of which is filed as the opinion in this case and made a part of the record in this case.

2. The present action involves an issue not involved in the aforementioned case of Payne vs. Griffin, to wit: whether or not Section 204 (d) of the Emergency Price Control Act of 1942 constitutionally prohibits the Superior Court of Bibb County from assuming jurisdiction of the subject matter in the case of Mrs. Kate C. Willingham vs. Andrew J. Lyndon, Rent Director, No. 7508, October term, 1943.

Wherefore, complainant respectfully moves the Court that the order heretofore entered on September 1, 1943, dismissing this action be amended by adding thereto after the words "record in this case" the following:

"Nothing contained in the opinion of this Court in the aforementioned case of Payne vs. Griffin shall be taken as ruling that Sec-

tion 204 (d) of the Act is unconstitutional insofar as it operates or may operate to restrict the jurisdiction of the Superior Court of Bibb County, Georgia, in the case of Mrs. Kate C. Willingham vs. Andrew J. Lyndon, Rent Director, No. 7508, October term, 1943."

57 Complainant, therefore, respectfully prays that this, his motion, be sustained.

T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney,
RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office.
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44 Pryor Street, NE., Atlanta, Georgia.

GEORGE J. BURKE,
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Federal Office Building No. 1, Washington, D. C.
Attorneys for Complainant.

58 In United States District Court

Amendment of order of September 1, 1943

Filed Sept. 14, 1943

The foregoing motion having been presented and considered by the court, counsel for all parties being present,

It is now ordered that the order of September 1, 1943, be amended by adding thereto the following:

"The court does not deem it necessary to decide and does not decide whether Section 204 (d) of the Act is unconstitutional insofar as it operates or may operate to restrict the jurisdiction of the Superior Court of Bibb County, Georgia, in the case of Mrs. Kate C. Willingham vs. Andrew J. Lyndon, Rent Director, No. 7508, October Term, 1943."

This September 14, 1943.

BASCOM S. DEAVER,
United States District Judge.

59 In the District Court of the United States for the Middle District of Georgia, Macon Division

[Title omitted.]

Application for appeal

Filed Sept. 30, 1943

Prentiss M. Brown, Administrator of the Office of Price Administration, an agency of the Government of the United States of America created by law, plaintiff herein, states that by order entered on the 1st day of September, 1943, a motion to dismiss the complaint herein, interposed by the defendant, was sustained by this Court, and that on the 14th day of September 1943, a motion for amendment of said order, interposed by the plaintiff, was sustained by the court. The plaintiff, feeling aggrieved by the ruling of the Court in sustaining said motion to dismiss by its order as amended, prays that he be allowed to appeal to the Supreme Court of the United States for a reversal of said order as amended, and of said judgment, and that a transcript of the record of this cause, duly authenticated, be sent to the Supreme Court of the United States.

The petitioner presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

Filed at Macon, Georgia, this 30 day of September 1943.

T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney,
RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office.
L. P. WEBB,
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44 Pryor Street NE., Atlanta, Georgia.

GEORGE J. BURKE,
George J. Burke,
FLEMING JAMES, JR.,
Fleming James, Jr.,
Of Counsel,
Office of Price Administration, Federal Office Building No. 1, Washington, D. C., Attorneys for Complainant.

69 In the District Court of the United States for the Middle District of Georgia, Macon Division

[Title omitted.]

Order allowing appeal

Filed Sept. 30, 1943

This cause having come on this day before the Court on petition of Prentiss M. Brown, Administrator of the Office of Price Administration, praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the order and judgment herein as amended, sustaining the defendants' motion to dismiss the complaint herein and requesting that a duly authenticated copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States; the Court having heard and considered said petition, together with petitioner's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court,

It is therefore ordered and adjudged that Prentiss M. Brown, as Administrator of the Office of Price Administration, be and he is hereby allowed an appeal to the Supreme Court of the United States from the order and judgment of this Court, as amended, sustaining the defendant's motion to dismantle the complaint herein, that a duly authenticated copy of the record in this case be transmitted to the Clerk of the Court, and that a citation be issued as provided by law.

It is further ordered that Prentiss M. Brown, as Administrator of the Office of Price Administration, be and he is hereby allowed a period of sixty days from the date hereof within which to file and docket said appeal in the Supreme Court of the United States.

Dated at Macon, Georgia, this 30th day of September, 1943.

(S) Bascom S. Deaver,
Bascom S. Deaver,
United States District Judge.

70 [Citation in usual form, filed Sept. 30, 1943, omitted in printing.]

71 In United States District Court

[Title omitted.]

Assignments of error

Filed Sept. 30, 1943

Prentiss M. Brown, as Administrator of the Office of Price Administration, having filed his application for appeal herein, now

states that as a result of the action taken by this Court in sustaining the defendants' motion to dismiss the complaint in this cause, there has intervened in said cause manifest error to his prejudice as Administrator of the Office of Price Administration, an agency of the Government of the United States, in the following respects:

1. The Court committed material error against the Administrator of the Office of Price Administration and against the United States of America in sustaining the defendants' motion to dismiss the complaint in the above entitled cause.

2. The Court committed material error against the Administrator of the Office of Price Administration and against the United States of America in sustaining the said motion to dismiss on the ground that the rent provisions of the Emergency Price Control Act of 1942 and the regulations pursuant thereto are unconstitutional and invalid, for the reasons stated in the opinion of this Court in the case of John W. Payne v. J. H. Griffin, No. 89, Thomasville Division, Middle District of Georgia, a copy of which was filed as the opinion in this cause and made a part of the record in this cause.

Filed at Macon, Georgia, this 30th day of September, 1943.

T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney,
RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office,
L. P. WEBB,
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44 Pryor Street NE., Atlanta, Georgia.

GEORGE J. BURKE,
George J. Burke,
FLEMING JAMES, JR.,
Fleming James, Jr.,
Of Counsel,
Office of Price Administration, Federal Office Building No. 1, Washington, D. C., Attorneys for Complainant.

72 In United States District Court

[Title omitted.]

Stipulation as to record

Filed Sept. 30, 1943

It is hereby stipulated and agreed by and between counsel for all parties in this matter that the portions of the record to be in-

cluded in the transcript to be sent to the Supreme Court of the United States, in connection with the appeal herein of Prentiss M. Brown, Administrator of the Office of Price Administration, shall consist of those portions specified in the praecipe heretofore filed in this case by said Prentiss M. Brown.

Filed at Macon, Georgia, this 30th day of September 1943.

(S) RALPH R. QUILLIAN,
Ralph R. Quillian,
Chief Attorney, Atlanta District Office,
Office of Price Administration.

(S) CHAS J. BLOCH,
HALL & BLOCH,
Attorneys for defendants.

By (S) Chas. J. Bloch.

73 In United States District Court

[Title omitted.]

Praecipe for record

Filed Sept. 30, 1943

To Clerk, United States District Court, Middle District of Georgia, Macon Division:

The appellant hereby requests that, in preparing the transcript of the record in the above entitled cause for his appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of complaint, entry of rule nisi, filing of amendment to original complaint, entry of order allowing such amendment, filing of defensive pleading and motion to dismiss of Mrs. Kate C. Willingham, filing of defensive pleading and motion to dismiss of J. R. Hicks, Jr., filing of amendment to defensive pleading of Mrs. Kate C. Willingham, entry of order allowing such amendment, entry of order sustaining defendants' motion to dismiss, filing of motion for amendment of order of September 1, 1943.

2. Complaint and exhibit.

3. Summons and acknowledgment of service.

4. Rule Nisi.

5. Amendments to original complaint and notations of Orders allowing said amendments.

6. Defensive pleading and motion to dismiss of Mrs. Kate C. Willingham.

9. Defensive pleading and motion to dismiss of J. R. Hicks, Jr.

10. Amendment to defensive pleading of Mrs. Kate C. Willingham, and notation of order allowing said amendment.

11. Order of September 1, 1943, sustaining defendants' motion to dismiss.

12. Opinion of this Court in Payne v. Griffin, referred to in said order of September 1, 1943.

13. Motion for amendment of order of September 1, 1943.

14. Amendment of order of September 1, 1943.

74 15. Application for appeal to the Supreme Court of the United States.

16. Statement of jurisdiction of the Supreme Court of the United States.

17. Order allowing appeal.

18. Citation.

19. Assignments of error.

20. Stipulation of parties as to record.

21. Praecipe for transcript of record.

22. Proof of service on appellees of application for appeal.

23. Statement to appellees directing their attention to the provision of Rule 12, paragraph 3, Rules of the Supreme Court of the United States.

Filed at Macon, Georgia, this 30th day of September 1943.

(S) T. NELSON PARKER,
T. Nelson Parker,
Regional Attorney,

(S) RALPH R. QUILLIAN,
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Chief Attorney, Atlanta District Office,

(S) L. P. WEBB,
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(S) GEORGE J. BURKE,
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(S) FLEMING JAMES, Jr.,
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Federal Office Building No. 1, Washington, D. C.
Attorneys for complainant.

77 [Clerk's certificate to foregoing transcript omitted in printing.]

78 Supreme Court of the United States

Order noting probable jurisdiction

November 15, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following Nos. 374 and 375.

[File endorsement on cover:] File No. 47957. Middle Georgia, D C. U. S. Term No. 464. Prentiss M. Brown, as Administrator of the Office of Price Administration, Appellant, vs. Mrs. Kate C. Willingham and J. R. Hicks, Jr. Filed October 29, 1943. Term No. 464 O. T. 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943